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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/892,435
Filing Date: June 27, 2001
Appellant(s): BARTLEY ET AL.

Bret J. Petersen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/17/2006 appealing from the Office action mailed

11/18/2005.

(1)   ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2)   ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or

be directly affected by or have a bearing on the decision in the pending appeal is contained in the

brief.

(3)   ***Status of Claims***

The statement of the status of the claims contained in the brief is correct.

(4)   ***Status of Amendments After Final***

Amendment after final was filed.

(5)   ***Summary of Invention***

The summary of the claimed subject matter is contained in the brief.

(6)   ***Grouping of Claims***

The rejection of claims 1-29 stand or fall together. See 37 CFR 1.192(c)(7).

(7)   ***Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8)   Prior Art of Record

2002/0147757	Day et al.	10-2002
5,704,031	Mikami et al.	30-1997
6,510,463	Farhat et al.	01-2003

(9)   Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-29 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior

office action, mailed on 11-18-2005.

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami et al

(U.S. 5,704,031) and Day et al (U.S. Pub No. 2002/0147757 A1).

3.   As per claims 1, 6, 11, 12, 13, 14, 15, 17, 18 & 24 Mikami disclosed a computer system

comprising: at least one processor; a memory coupled to the at least one processor; an execution

data collection mechanism residing in the memory and executed by the at least one processor, the

execution data collection mechanism collecting execution data for the computer system (col.1,

lines 59-67 & col.2, lines 1-5); an execution data transmission mechanism residing in the

memory and executed by the at least one processor, the execution data transmission mechanism,

when enabled, transmitting at least a portion of the execution data to another computer system

coupled to the computer system via a network (col.2, lines 11-37).

However Mikami did not disclose in detail about an execution data access mechanism residing in

the memory and executed by the at least one processor, the execution data access mechanism

allowing access to the execution data by a user of the computer system only if the execution data

transmission mechanism is enabled. In the same field of endeavor day disclosed that client and

server could communicate by means of requests and/or responses (paragraphs. 37 & 47).

It would have been obvious to one in the ordinary skill in the art at the time the invention was

made to have incorporated access means by another computer as taught by Day to the computer

system having execution data taught by Mikami in order to make the information available to

another entity for analysis or record and thus making the system versatile.

4.   As per claims 2 & 7 (Mikami-Day) disclosed the computer system of claim 1 wherein the

computer system comprises a customer computer system and the another computer system

comprises a vendor computer system (Mikami, col.1, lines 1-63).

5.   As per claims 3, 8, 21 & 27 (Mikami-Day) disclosed the computer system of claim 1

wherein the execution data comprises data collected by an operating system residing in the

memory and executed by the at least one processor (Mikami, col.1, lines 64-67 & col.2, lines 1-

6).

6.   As per claims 4, 9, 22 & 28 (Mikami-Day) disclosed the computer system of claim 1

wherein the execution data comprises data collected by a software application residing in the

memory and executed by the at least one processor (col.2, lines 11-21).

7.   As per claims 5, 10, 23 & 29 (Mikami-Day) disclosed the computer system of claim 1

wherein the execution data comprises data collected 2 by an analysis program residing in the

memory and executed by the at least one processor (Mikami, col.2, lines 21-37).

8.   As per claim 16 (Mikami-Day) disclosed the method of claim 15 further comprising the

step of; (D) the customer computer system sharing the execution data (Mikami, col.3, lines 1-

14)

9.   As per claim 19 & 25 (Mikami-Day) disclosed the program product of claim 18 wherein

the signal bearing media comprises recordable media (Mikami, col.3, lines 14-25 & col.4, lines

3-11)

10.   As per claim 20 & 26 (Mikami-Day) the program product of claim 18 wherein the signal

bearing media comprises transmission media (Mikami, col.2, lines 50-67).

(10) Response to Arguments

The applicant argues the following issues regarding **claim 1** to support his position

against the prior art Mikami et al. 5,704,031 and Day et al. U.S. 2002/0147757 A1.

Issue 1:   **The applicant argues that claims 1-29 are unpatentable under 35 U.S.C.**

103(a) over Mikami (5,704,031) in view of Day (U.S. Pub No. 2002/0147757 A1)

With respect to claims 1, 2, 6, 7, 11, 18-20 and 24-26 the applicant argued as following:

A.   Applicant primarily argued on page 7 that Day does not teach the claim limitation that

states "the execution data access mechanism allowing access to the execution data by the user of

the computer system **only if** the execution data transmission mechanism is enabled."

The examiner disagrees with the applicant and will explain his position by elaborating the claim

language of the above limitation and mapping it to the cited reference.

Basically the above limitation talks about a data access mechanism that is residing in the

memory, which allows access to the data of a user if the data transmission mechanism is enabled.

Although Day does not specifically uses the term, "execution data transmission mechanism" as used by the applicant, which allows access to the data. However Day discloses an <u>access privilege mechanism</u>, which allows or rejects transitions between computers. In a computer related environment it is obvious to one in the ordinary skill in the art to know that the function of access privilege mechanism is to deny or grant access to an entity based on the requester's enablement or disablement with respect to the entity that is being accessed. In other words computer A's right to access computer B's data is based upon enabled or disabled access rights for computer A in the access privilege mechanism, I.E. if computer A tries to access computer B's data it has to go through the access privilege mechanism which determines the enablement or disablement of computer A's accessibility rights before allowing or denying it to access computer B's data (Please read in Day paragraph 37 and then paragraphs 47, 55 & figure 4). Therefore the examiner answers the argument by the applicant that Day does not show enablement of "execution data transmission mechanism".

B.   Applicant further argued on page 10 that that even if Day teaches the above limitation there is no limitation to combine Day with Mikami.

As to applicant's argument it would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated access means by another computer as taught by Day to the computer system having execution data taught by Mikami in order to make the information available to another entity for analysis or record and thus making the system versatile.

Claims 3, 8, 21 and 27

Applicant argued on page 11 that dependent claims 3, 8, 21 & 27 are allowable for the same reasons independent claims 1, 6, 18 & 24 are allowable. The examiner maintains the previously presented rejections of these cited claims.

Claims 4, 9, 22 & 28

Applicant argued on page 12 that dependent claims 4, 9, 22 & 28 are allowable for the same reasons independent claims 1, 6, 18 & 24 are allowable. The examiner maintains the previously presented rejections of these cited claims.

Claims 5, 10, 23 & 29

Applicant argued on page 13 that dependent claims 5, 10, 23 & 29 are allowable for the same reasons independent claims 1, 6, 18 & 24 are allowable. The examiner maintains the previously presented rejections of these cited claims.

Claim 12

Applicant argued that the reference does not disclose a second computer transmitting at least a portion of the execution data to the first computer.

As to applicant arguments Day in paragraph 37 clearly describes various network entities communicating with each other such as file sharing, application downloads and other online services. It is obvious from the above teaching that the transactions between the network entities include transfer of data from one to the other.

Claims 13 & 14

Applicant argued that reference does not disclose allowing the user to access a limited portion

of the execution data, and if the transmission of the execution data is enabled allowing access to

the execution data by the user of the second computer.

As to applicants argument the examiner would again like to point out the explanation given by

the examiner under issue 1 section A of this office action which talks about access the rights

available to user on a computer to access information and the limiting of those right by the use of

access privilege mechanism.

Claim 15

Applicant argued on page 14 that this claim is directed towards a method of doing business with

a computer having a system where customer access to the execution data is disabled if the

customer rejects the offer to have access to the data in exchange for the customer sharing the

execution data.

The examiner would first like to point out that when reviewing a reference the applicants should

remember that not only the specific teachings of a reference but also reasonable inferences which

the artisan would have logically drawn therefrom may be properly evaluated in formulating a

rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d

194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226

USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about

the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317

(CCPA 1962). The conclusion of obviousness may be made from common knowledge and

common sense of a person of ordinary skill in the art without any specific hint or suggestion in a

particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference

relies to some extent on knowledge of persons skilled in the art to complement that is disclosed

therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977). Additionally applicant's

arguments against the references individually, one cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of references. See *In re*

Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986).

As to applicants arguments Day clearly discloses computer entities conducting activities

involving on-line banking & secure shopping, streaming audio/video services etc which are one

of the methods of doing business on the internet these days (please see paragraph 37). One in the

ordinary skill in the art would be familiar that in an on-line shopping scenario for example

purchasing a video song (Mpeg data), a purchase request is granted or rejected by a seller based

on the acceptance of the purchaser's identity (credit card number, password, IP address etc)

(Day, paragraphs 60 & 61).

Claims 16 & 17

Applicant argued on page 15 that dependent claims 16 & 17 are is allowable for the same

reasons independent claim 15 is allowable. The examiner maintains the previously presented

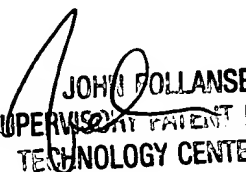rejections of these cited claims.

Respectfully submitted,

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Conferees

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